

AF ZPW



Docket No.: 071836-0012

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 20277
WOLFGANG LUDWIG	:	Confirmation Number: 3668
Application No.: 09/808,398	:	Group Art Unit: 1761
Filed: March 14, 2001	:	Examiner: D. Becker
For: METHOD OF AND APPARATUS FOR THE PROCESSING OF MEAT	:	

**LETTER IN RESPONSE TO THE NOTIFICATION OF
NON-COMPLIANT APPEAL BRIEF**

Mail Stop Response
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REMARKS

The Examiner issued a Notification of Non-Compliant Appeal Brief dated June 21, 2005 raising procedural issues. Appellant submits herewith a Supplemental Appeal Brief (in triplicate) in response thereto.

The Examiner's notification comprises two sections. One section contains boxes, some of which are checked. After the 10th box, the Examiner provided comments. Appellant will address each issue below.

Box 4 and Related Comments

The Examiner checked box 4 which requires the Brief to contain a concise explanation of the subject matter defined in each independent claim as well as an identification of every means plus function element. This was believed to be originally done. The means plus function element was not identified in the specification because it was specified in the claims. At any rate, in order to expedite resolution of this Appeal, Appellant has referred to each element of each independent claim by reference to the specification and/or drawings, and has identified the structure disclosed in the specification to perform the recited functions.

The Examiner also stated in his explanation “The Summary should not refer to references or any other applications.” Appellant hereby challenges the basis for the Examiner’s assertion. The Examiner has no authorization to go beyond the rules. The rules state what must be in the Summary. The rules do not preclude or tie an Appellant’s hands from making comments. The Examiner is not free to coerce an Appellant into writing a Brief which pleases the Examiner. It should be noted that the other application mentioned by the Examiner is the **published application of the present specification** which was referred to by paragraph numbers for ease of understanding. At any rate, and again in order to expedite resolution of the substantive issues involved in the Appeal, the Summary has been revised without referring to any applied reference and by referring to the original application.

Box Number 6 regarding arguments for each Ground of Rejection

The Examiner checked box 6 which states that the Brief did not contain an argument under a separate heading for each ground of rejection on Appeal. The Examiner explained that five rejections were imposed, but the **final two grounds of rejections were not separately argued**. This observation is undeniably accurate, because **Appellant chose not to separately argue the patentability of certain dependent claims**.

Is the Examiner attempting to coerce Appellant to make an argument Appellant does not want to make? The Examiner may have overlooked the fact that in the first paragraph under Section VIII argument, it was stated that the patentability of claims 11, 17, 21, 29 and 33 was argued. Appellant further separately listed the final two rejections and expressly stated that the rejected claims stand or fall with independent claims upon which they depend. **What is wrong with this?**

At any rate, and again in order to expedite resolution of the substantive issues on Appeal, additional language has been provided in the arguments grouping the claims argued and specifically stating that the separate patentability of the claims encompassed by rejections 4 and 5 is not argued.

Box 7 and Issues related to the appealed claims

The Examiner checked box 7 which indicates the Brief does contain a correct copy of the appealed claims as an Appendix thereto. The Examiner is wrong. The "Claims appendix" contains the appealed claims which are "the claims involved in the appeal". The Examiner appears to be of the opinion that cancelled claims should be included in the Claims appendix. Since the cancelled claims are not involved in the appeal, Appellant hereby questions the basis

for the Examiner's requirement for cancelled claims to appear in the Claims appendix.

Appellant would refer to 37 CFR §41.35(viii), which reads as follows:

Claims appendix. An appendix containing a copy of the claims **involved in the appeal**. (Emphasis supplied).

Since the cancelled are not "involved in the appeal", Appellant did not include the cancelled claims in the Claims appendix.

In the interest of expediting resolution of the substantives issues, Section "III. **Status of Claims**" has been modified to include the cancelled claims.

Comments on Arguments

The Examiner commented as follows:

In the Arguments, Appellant should not draw conclusions on what the Examiner may or may not have been considering, and should not speculate on why decisions were made. Most decisions require consideration of many different issues and can not be boiled down to one simple reason.

Appellants cries foul. The Examiner is attempting to deprive Appellant of his right to **due process of law** by telling Appellant what he may or may not argue. If the Examiner does not agree with Appellant's arguments, then the Examiner is free to offer a rebuttal in his Answer. If the Examiner believes that Appellant inappropriately speculated on why decisions were made, the Examiner is free to disabuse the record by clarifying his position. To merely state that a reason can not be offered leaves Appellant in the dark as to the basis for the Examiner's reasoning and violates procedural **due process of law**.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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